TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 835.

THE UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

VICTORIA, FISHER AND WESTERN RAILROAD COMPANY, LOUISIANA LONG LEAF LUMBER COMPANY AND RAILROAD COMMISSION OF LOUISIANA.

No. 836.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY AND [illegible] RAILWAY COMPANY, APPELLANTS,

vs.

VICTORIA, FISHER AND WESTERN RAILROAD COMPANY.

(23,986 and 23,987)

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a United States Commerce Court.

No. 93.

VICTORIA, FISHER & WESTERN RAILROAD COMPANY and LOUISIANA LONG LEAF LUMBER COMPANY, Petitioners,

vs.

THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION, Atchison, Topeka & Santa Fe Railway Company, Gulf, Colorado & Santa Fe Railway Company, Railroad Commission of Louisiana, Interveners.

UNITED STATES OF AMERICA, *ss:*

Be it remembered that in the United States Commerce Court, in the city of Washington, District of Columbia, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

Petition.

(Filed January 14, 1913.)

1 In the United States Commerce Court.

No. —.

VICTORIA, FISHER & WESTERN RAILROAD COMPANY and LOUISIANA LONG LEAF LUMBER COMPANY, Petitioners,

vs.

THE UNITED STATES OF AMERICA, Respondent.

Petition.

To the Judges of the United States Commerce Court:

Your petitioners, Victoria, Fisher & Western Railroad Company and Louisiana Long Leaf Lumber Company, complain of respondent, United States of America, and for cause of action say:

I.

That petitioner, Victoria, Fisher & Western Railroad Company, is a railway corporation duly chartered and acting as such under the laws of the State of Louisiana and by its charter is incorpo-
2 rated for the purpose of constructing, operating and maintaining a standard gauge railroad for the purpose of carrying freight only between the city of Natchitoches in Natchitoches Parish, through the towns of Victoria and Fisher by the most practicable route to a point on the Sabine River in Sabine Parish at or near the

town of East Pendleton. That by charter duly issued it was so incorporated on the 8th day of November, 1902, and by said charter it is authorized to exercise all of the rights and subject to all of the duties of a common carrier of freight for the full period of fifteen years from the date of the issuance of said charter. That pursuant to the terms of its said charter, petitioner has acquired, constructed and maintained and is now maintaining a standard gauge railway thirty miles in length from the town of Victoria, where it connects with the line of the Texas & Pacific Railway Company, through the town of Fisher, where it intersects the line of the Kansas City Southern Railway Company, to the town of Cain, its residence and principal place of business being in the town of Fisher in Sabine Parish in the State of Louisiana. Petitioner attaches hereto map marked Exhibit "A," showing location of its line of railway, with location of lumber mills of petitioner Louisiana Long Leaf Lumber Company. That petitioner's railway is permanently constructed and fully equipped to discharge all of its duties as a common carrier of freight and is now discharging and has continuously since its creation fully discharged its duties under its said charter as a public common carrier, and is now acting as a common carrier of freight for the public in accord-
3 ance with the terms of its charter under the laws of the State of Louisiana and continuously since its creation has acted as a common carrier of interstate commerce, subject to the Act to Regulate Commerce and the laws of the United States applicable to common carriers until prevented be the void and illegal orders of the Interstate Commerce Commission hereinafter referred to.

That the Louisiana Long Leaf Lumber Company is a corporation chartered under the laws of the State of Missouri for the purpose of manufacturing and selling lumber with its principal office and place of business in the city of Kansas City in the State of Missouri.

II.

That the railway line of petitioner, Victoria, Fisher & Western Railroad Company, with its equipment and appurtenances represents an actual investment of $406,461.79; that it is permanently constructed with forty and sixty-pound rails and fully equipped with locomotives, cars and all appliances and officers, operatives and employés necessary and proper to enable it to conduct its business as a common carrier of freight. That its equipment consists of five locomotives, three box cars, one flat car, 125 logging cars and four caboose cars of the total value of $86,501.38. That it is subject to all of the laws of the State of Louisiana applicable to common carriers and to the orders of the Railroad Commission of that state which is duly empowered to fix rates of freight and to otherwise regulate the conduct and operation of common carriers. That it makes regular annual reports to said Railroad Commission of Louis-
4 iana and otherwise conforms to the rules and regulatoins of saidCommission. That it makes regular annual reports to the Interstate Commerce Commission and complies with all of the rules and regulations of said Commission and complies with all of the laws of the United States applicable to common carriers engaged in inter-

state commerce. That it has on file with the Interstate Commerce Commission duly published and established a full line of interstate rates applicable to all classes and commodities of freight moving in interstate commerce, except as to the lumber and products of petitioner, Louisiana Long Leaf Lumber Company. That as to such products, from the time of its creation until the void and illegal orders hereinafter mentioned of the Interstate Commerce Commission, it had on file with the Interstate Commerce Commission and duly and legally established and operative interstate rates applicable also to such products moving in interstate commerce over duly and legally established through interstate routes and under duly and legally established joint interstate rates from points on petitioner's line to interstate and foreign points out of which through interstate rates it received by agreement with its connecting lines, the Texas & Pacific Railway Company and the Kansas City Southern Railway Company, and their connecting lines, just and reasonable divisions of such through rates as compensation for the services performed by your petitioner in producing and transporting such products in interstate and foreign commerce. That by virtue of the orders of the Interstate Commerce Commission hereinafter referred to petitioner since the first day of May, 1912, has been driven from the
5 field of interstate commerce as to such products of the Louisiana Long Leaf Lumber Company and has been prevented and forbidden to engage in such interstate and foreign commerce as to such products and has been prevented from receiving compensation for its services as a common carrier of such products and its connections, the Texas & Pacific Railway Company and the Kansas City Southern Railway Company, and their railway connections, have been forbidden to establish through routes or joint rates with your petitioner on such products to interstate and foreign points and your petitioner has been by said orders of the Interstate Commerce Commission denied the right to engage in interstate commerce as to such products, while at the same time it is compelled, under the laws of the United States and the rules, regulations and orders of the Interstate Commerce Commission to engage in such commerce as to all other classes and commodities of freight.

III.

That the Constitution and laws of the State of Louisiana provide as follows:

Constitution, Art. 271. "Any railroad corporation or association organized for the purpose shall have the right to construct and operate a railroad between any points within this state and connect at the state line with railroads of other states. Every railroad company shall have the right with its road to intersect, connect with or cross any other railroad, and shall receive and transport each other's passengers, tonnage and cars, loaded or empty, without delay or discrimination." Const. 1879, Art. 243.

6 Constitution, Art. 272. "Railways heretofore constructed, or that may hereafter be constructed in this State, are hereby

declared public highways, and railroad companies common carriers." Const. 1879, Art. 244.

Constitution, Art. 273. "Every railroad or other corporation, organized or doing business in this State, under the laws or authority thereof, shall have and maintain a public office or place in this state for the transaction of its business, where transfers of stock shall be made and where shall be kept for public inspection books in which shall be recorded the amount of capital stock subscribed, the names of owners of stock, the amounts owned by them respectively, the amount of stock paid, and by whom, the transfers of said stock, with the date of transfer, the amount of its assets and liabilities, and the names and places of residence of its officers." Const. 1879, p. 245.

Revised Statutes, Sec. 1479. "Whenever the state or any political corporation of the same, created for the purpose of exercising any portion of the governmental powers in the same, or the board of administrators or directors of any charity hospital, or any board of school directors thereof, or any corporation constituted under the laws of this state for the construction of railroads, plank roads, turnpike roads or canals for navigation; or for the construction or operation of waterworks or sewerage to supply the public with water and sewerage, or for the purpose of transmitting intelligence by magnetic telegraph, cannot agree with the owner of land which may be wanted for its purchase, it shall be lawful for such state, corporation, board of administrators, directors or person to apply by petition to the District Court in which the same may be situated, or if it extends into two districts, to the judge of the District Court in which
7 the owner resides, and if the owner does not reside in either district, to either of the District Courts, describing the land necessary for the purposes, with a plan of the same, and a statement of the improvement thereon, if any, and the name of the owner thereof, if known at present in the state, with a prayer that the land be adjudged to such state, corporation, board of administrators or directors upon payment to the owner of all such damages as he may sustain in consequence of the expropriation of said land for such public works; all claims for lands or damages to the owner caused by its taking or for expropriation for such public work shall be barred by two (2) years' prescription, which shall commence to run from the date at which the land was actually occupied and used for the construction of the works." (As amended by Act 227, 1902, p. 457.)

That the Louisiana Long Leaf Lumber Company is engaged in the business of manufacturing and selling pine lumber produced from pine timber owned by it, situated tributary and adjacent to the line of said Victoria, Fisher & Western Railroad Company. That it owns and operates two saw mills with all of the usual appurtenances thereto for manufacturing lumber, situated respectively at the town of Victoria and the town of Fisher. That these mills are of the value respectively and represent respectively an investment of $110,000.00 and $245,000.00. That the lands of said company from which said lumber is manufactured are of the reasonable value of $1,500,000.00. That said company ships annually about 40,000,000 feet of lumber

representing 2,000 carloads per year. That practically all of this lumber moves out over the line of petitioner Victoria, Fisher
8 & Western Railroad Company, through its said connections, the Texas & Pacific Railway and the Kansas City Southern Railway, to interstate and foreign points. That while a portion of said manufactured lumber manufactured at Victoria, where the line of the Victoria, Fisher & Western Railroad Company connects with the Texas & Pacific moves to interstate and foreign points over the line of said Texas & Pacific and a portion of said lumber manufactured at Fisher moves out to interstate and foreign points over the line of the Kansas City Southern Railway, by reason of the insufficiency of car supply at various intervals due to increased business and by reason of freight conditions and dependent upon the place of ultimate delivery, large quantities of the finished lumber products move from said mill at Fisher over the line of said Victoria, Fisher & Western Railroad Company to the Texas & Pacific Railway at Victoria and from said place of Victoria to Fisher on the Kansas City Southern Railway Company's line, a distance of approximately 22 miles. That under milling-in-transit regulations, duly and legally established in accordance with the rules, regulations and decisions of the Interstate Commerce Commission, the through rates on interstate and foreign lumber legally effective and applicable prior to the orders herein complained of were extended to and were effective from the point of origin of the logs and said Victoria, Fisher & Western Railroad Company, by agreement with its said connections, received out of said through rates as compensation to it for its haul of the logs to the mill and of the lumber from the mill to the junction with its said connections divisions of said through rate varying from
9 one cent to four cents, according to the point of ultimate delivery and the connecting lines over which the traffic moved, which said compensation was in all things just and reasonable. That a large part of the lumber so manufactured and sold by petitioner Louisiana Long Leaf Lumber Company, is sold f. o. b. the mills; that is to say, the lumber is sold at a delivered price at the mills and the purchaser obtains title at the mills and pays the freight thereon together with the purchase price at the point of delivery.

IV.

That said Victoria, Fisher & Western Railroad Company was chartered, constructed and has been operated, and the mill and timber investments of said Louisiana Long Leaf Lumber Company have been made in full faith and reliance upon the decisions of the Interstate Commerce Commission in the Central Yellow Pine Association v. The Vicksburg, Shreveport & Pacific Railroad Company et al., decided March 19, 1904, and reported in 10 I. C. C. R. 193, wherein it was held that divisions of the through rates might properly and legally be accorded to lines of railway similarly situated with petitioner Victoria, Fisher & Western Railroad Company, notwithstanding the ownership of the short-line railway was substantially identical with that of a lumber company producing the greater part of its tonnage and wherein the practices condemned by the orders

hereinafter mentioned were held to be in all things legal. That at or about the same time the Interstate Commerce Commission held in the case of In re Divisions of Joint Rates, 10 I. C. C. R. 385, and In re Transportation of Salt, 10 I. C. C. R. 148, that divisions of the through rates and milling-in-transit privileges and arrangements thereon under such circumstances were in all things legal. That the principles therein announced were applied to conditions long theretofore obtaining and were received and applied as law until the reversal by the Interstate Commerce Commission in and by the orders hereinafter mentioned and complained of. That the principles announced by the Interstate Commerce Commission in said cases had become and were a rule of property and that the amounts invested by your petitioners herein were made in full faith and reliance upon said rules.

V.

That on or about the 28th day of January, 1908, the Interstate Commerce Commission entered upon a hearing and investigation in a certain cause entitled Star Grain & Lumber Company et al. v. Atchison, Topeka & Santa Fe Railway Company et al., docket No. 1319; that hearings were had at various times and places and on the 23d day of June, 1908, the Interstate Commerce Commission made a report and rendered an opinion found in the 14th Interstate Commerce Commission Reports, page 364, et seq., reference to which is here made. That further hearings were thereafter had in said case and on December 7, 1909, said Interstate Commerce Commission made a supplemental report, published in 17th Interstate Commerce Commission Reports, page 338, et seq., reference to which supplemental report is here made and same is made a part hereof as fully as if set out herein.

VI.

That by reason of the rendition of these reports and for the reason that the Interstate Commerce Commission demanded of the trunk-line carriers that they comply with the requirements thereof and because the Interstate Commerce Commission, through its members, officers and agents, threatened the various trunk lines with criminal prosecutions if they failed to comply therewith, many trunk lines, including the Texas & Pacific Railway Company and the Kansas City Southern Railway Company, acting solely under the compulsion of these opinions and these threats of prosecution, on or about the — day of August, 1910, filed with the Interstate Commerce Commission new tariffs and supplemental tariffs effective in thirty days, cancelling all joint tariffs and divisional arrangements with petitioner Victoria, Fisher & Western Railroad Company, and other connections, and, except for the orders of said Interstate Commerce Commission referred to in the paragraph next succeeding, petitioner Victoria, Fisher & Western Railroad Company would not have been a party to any joint interstate rate or through routes on lumber with other railroads and petitioner Louisiana Long Leaf Lumber Com-

pany, and purchasers of its lumber would not have had the benefit of through routes or joint rates and would have been compelled to pay the through rate to the junction points of said Victoria, Fisher & Western Railroad Company with the Texas & Pacific Railway
12 Company and the Kansas City Southern Railway Company plus the local Louisiana rate imposed by the Railroad Commission of Louisiana over the Victoria, Fisher & Western Railroad to said point of junction, whereby they would have been placed at serious disadvantage as compared with mills enjoying such through rate, producing as against them an unjust and illegal discrimination violative of the Act to Regulate Commerce.

VII.

That thereupon, on or about the 3d day of September, 1910, upon complaint made to the Interstate Commerce Commission, said body, by orders regularly made, suspended said new supplemental tariffs of said trunk lines, including the Kansas City Southern Railway Company and Texas & Pacific Railway Company, canceling out said joint tariffs and through routes theretofore obtaining and thereby keeping in force and effect the joint tariffs and the maintenance of through routes and joint rates between petitioner Victoria, Fisher & Western Railroad Company and Texas & Pacific Railway Company and Kansas City Southern Railroad Company and various other trunk line railroads and systems of the United States for the period of 120 days, reference to which orders is hereby made and the same are made a part hereof, and the said Interstate Commerce Commission, from time to time, continued by appropriate orders the suspension of the cancellation of rates between said railway companies and petitioner Victoria, Fisher & Western Railroad Company,
13 until the 30th day of April, 1912, the last of said orders being in words and figures as follows:

"At a General Session of the Interstate Commerce Commission, Held at its Office in Washington, D. C., on the 16th Day of January, A. D. 1912.

Charles A. Prouty,
Judson C. Clements,
Franklin K. Lane,
Edgar E. Clark,
James S. Harlan,
Charles C. McChord,
Balthasar H. Meyer,
Commissioners.

Investigation and Suspension Docket No. 11.

In the Matter of the INVESTIGATION AND SUSPENSION OF SCHEDULES Canceling Through Rates with Certain Tap Line Connections.

It Appearing, That, by orders heretofore entered, the Commission instituted an investigation and hearing concerning the propriety

of various tariffs filed by certain carriers wherein joint rates with the divisions or allowances to so-called tap line connections were to be canceled and withdrawn; and the Commission, by orders duly filed and served, having suspended and deferred the effectiveness of such tariffs until June 1, 1911; and that under authority of an order entered herein on May 18, 1911, the various carriers withdrew their said tariffs canceling such divisions or allowances and refiling them to become effective on November 1, 1911; and that under authority of a further order entered herein on October 16, 1911, the various carriers withdrew their said tariffs canceling such divisions or allowances, and refiled them to become effective on February 1, 1912; and,

It Further Appearing, That a full investigation of the said matters has been had, but it has been impossible for the Commis-
14 sion to reach a final decision of the questions and matters involved within the period for which the operation of the said schedules has been voluntarily postponed by the carriers; namely, on or before February 1, 1912; and,

It Further Appearing, That the various carriers by which the cancellations in question were published, republished and filed with the Commission are desirous of withdrawing the said cancellation tariffs and refiling them, thereby further postponing their effectiveness to May 1, 1912;

It Is Ordered, That each and all of the carriers that are parties to this record be, and they are hereby, authorized on three days' notice to the Commission and to the public, to cancel and withdraw all such tariffs filed with the Commission, and under their present terms to become effective on or before February 1, 1912, in which are contained cancellations or withdrawals of joint rates or divisions with or allowances to so-called tap line connections, and, Provided, the said tariffs art forthwith refiled to become effective on May 1, 1912;

It is Further Ordered, That all tariffs or supplements issued under authority of this order shall bear the following notation on title page:

Issued by authority of the Interstate Commerce Commission's Order of January 16, 1912, in Investigation and Suspension Docket No. 11.

A true copy.

C. A. PROUTY, *Chairman.*"

VIII.

Pursuant to said orders, the Interstate Commerce Commission entered upon a further hearing of the matters of the propriety of the advances and the lawfulness of the rates, fares and charges stated in schedules mentioned in said orders and thereupon, on or
15 about the 15th day of November, 1910, gave to petitioner Victoria, Fisher & Western Railroad Company, and the various other railroad companies in the United States, notice that a hearing would be had on the Matter of Tap Line Allowances and Divisions at New Orleans on the 9th day of December, 1910. That pursuant to said notice and the orders of the Interstate Commerce Commission

hereinabove referred to, your petitioner Victoria, Fisher & Western Railroad Company, together with numerous other railway companies, appeared before the Interstate Commerce Commission at New Orleans on December 8, 1910, and subsequent days at St. Louis, Mo., and at Chicago, Ill., upon adjournments of said hearing and thereupon said Interstate Commerce Commission examined the officers and agents of petitioner Victoria, Fisher & Western Railroad Company, concerning the matters under investigation in said proceeding and thereafter within the time fixed by the Commission petitioner filed with the Interstate Commerce Commission a statement of facts and abstracts of the evidence which had been taken before said Commission in reference to said petitioner and brief and argument. That on the 29th day of April, 1912, the Interstate Commerce Commission rendered an opinion, No. 1853, entitled "Investigation and Suspension Docket No. 11, The Tap Line Case," which opinion will be found in the 23d Interstate Commerce Commission Report, page 277, et seq., reference to which opinion is hereby made and which is made a part hereof as fully as if set out herein in full. In said opinion and supplemental report is found the following, to-wit:

16 "The cancellation by the trunk lines will be allowed to become effective on May 1st (1912) as provided in the tariffs now on file."

That said order, taken in connection with the order of the 16th day of January, 1912, hereinabove set out in full, which ordered the trunk line carriers to withdraw all tariffs canceling joint rates with petitioner and other lines similarly situated and ordered the same refiled to become effective on May 1, 1912, constituted and was an affirmative order of the Interstate Commerce Commission authorizing and commanding the trunk line railroad companies of the United States, including the Texas & Pacific Railway Company and the Kansas City Southern Railway Company, to cancel all joint interstate rates on lumber with petitioner Victoria, Fisher & Western Railroad Company, on the first day of May, 1912, and affirmatively denying to said petitioner the right to engage in interstate and foreign commerce therein. That said trunk line companies of the United States, including the Kansas City Southern Railway Company and the Texas & Pacific Railway Company, construed said opinion and order herein last above referred to as an order from the Commission to cancel said joint rates and tariffs with petitioner Victoria, Fisher & Western Railroad Company, and now have canceled and have ceased to maintain any joint tariffs or through routes and joint rates with petitioner on lumber and forest products of the Louisiana Long Leaf Lumber Company, and the Interstate Commerce Commission, through its secretary, promptly notified the trunk line railroads of the United States that said cancella-

17 tions took effect at midnight on the 30th day of April, 1912, and that rates as filed must be observed by carriers and shippers if criminal prosecutions under the Interstate Commerce Act and the Elkins Act were to be avoided.

IX.

Petitioners further state that on the first day of June, 1912, the Interstate Commerce Commission made a supplemental report entitled "Investigation and Suspension Docket No. 11, the Tap Line Case," which is reported in the 23d Interstate Commerce Commission Reports, page 549, et seq., reference to which is hereby made and which is made a part hereof as fully as if set out at length herein, said supplemental report and opinion, insofar as it makes a finding of facts in reference to the petitioner Victoria, Fisher & Western Railroad Company, is in words and figures as follows, to-wit.

Investigation and Suspension Docket No. 11. The Tap Line Case, Decided May 14, 1912.

Supplemental Report of the Commission.

By the COMMISSION:

In the general report herein (ante, page 277), after stating the history of the several tap lines there mentioned and setting forth the salient features in connection with their ownership, physical condition, general character, source of traffic and revenue, and the manner in which their operations for the proprietary company are conducted, we found that in none of the cases there disposed of did the tap line perform a service of transportation, either in the movement
18 of the products of the mill of the proprietary company or in the movement of its logs from the forest to its mill. We held that the service in each case, so far as the logs and lumber of the proprietary company are concerned, was a plant service. It was also said at the close of the report that in a supplemental opinion, to be announced in the near future, we would state the facts in relation to all the other tap lines whose affairs are disclosed in the record before us, pointing out from among them such as, in the judgment of the Commission, bear a different relation to their respective proprietary lumber companies; and that in connection with the supplemental report we would — before us as the conclusions announced might enter such order with respect to all the tap lines require.

Many of the tap lines described in this report differ only in detail from the lines described in the original report and consequently are controlled by the same principles. At the conclusion of the statement in each case, we have noted a finding to which effect will be given in the order to be entered. It seems well, however, before describing the remaining tap lines of record, to call attention to a practice that finds frequent illustration in the pages that follow. In a number of cases, the tap line, without charge, hauls the logs of the lumber company that owns it. In other cases the lumber company itself hauls its logs over the tap line rails to its mill. In some instances its right to do this is evidenced by a formal trackage contract; in other instances it is done under a verbal understanding. In some cases no charge is entered up by the tap line against the lumber company for this use of its tracks, and in a few cases the lumber company

pays a small compensation. In several instances the trunk lines themselves have given trackage rights for a small toll to lumber companies. We have not understood that special privileges of
19 this kind may lawfully be granted to a shipper. It is not uncommon for one railroad to give the use of its rails to another railroad under a trackage agreement, but we see no way in which a shipper may enjoy such a privilege over the rails of a common carrier, particularly when the compensation for the privilege is not published and the privilege is not open equally to other shippers. Except in one or two cases where the tap line crosses the state boundary line, such arrangements are possibly to be regarded as purely local, and, therefore, beyond our control. But they are inherently unlawful, and afford strong evidence that a tap line whose rails are used in that manner by its proprietary lumber company is a mere plant facility. On the other hand, such an arrangement with a shipper, even though it be purely local, and, therefore beyond our control, may nevertheless operate as a rebate and be punishable as such under this law when it appears that the concession is made in order to secure the interstate traffic of the shipper. All such arrangements are wrongful and we shall expect them to be discontinued. It may be well again to say that in the disposition made of these cases we have had in mind the special conditions that exist in this territory, and have taken such action as, under all the circumstances developed, seemed necessary in the prevention of unlawful discriminations and preferences. Doubtless, the same or generally similar conditions exist in other extensive lumber producing districts and may be duplicated elsewhere in connection with different classes of traffic. But it is obvious that matters of this nature cannot be dealt with in a wholesale manner, but must be considered separately and in the light of the surrounding conditions and special facts. It will, therefore, be fully understood that all that is here said is intended to relate specifically to the conditions found to exist in this territory. * * *

20 Victoria, Fisher & Western Railroad.

The Victoria, Fisher & Western Railroad Company is owned by the stockholders of the Louisiana Long Leaf Lumber Company, the stock in the two companies being held by the same persons and in the same relative proportion. They have the same officers. The railroad corporation was formed in November, 1902, and its capital stock, amounting to $300,000, was issued as a dividend to the stockholders of the lumber company in exchange for the tracks and equipment then owned and theretofore operated by the lumber company. A part of the track seems to have been constructed some 25 years ago and was acquired by the lumber company in 1900. The tap line connects with the Texas & Pacific at Victoria, La., and runs southward, crossing the Kansas City Southern at Fisher and terminating at a point known as Cain, a total distance of about 31 miles. There are about 25 miles of logging spurs and side-tracks. The tap line has 5 locomotives, 4 cabooses, 3 box cars, 1 flat car, and 105 logging cars. It does not operate any trains on regular schedule.

The lumber company has two mills, one about a mile from the junction with the Texas & Pacific at Victoria, and the other about half a mile from tracks of the Kansas City Southern at Fisher. The Victoria mill has been in operation for about 25 years. The timber holdings of the lumber company approximate 95,000 acres, in addition to which it owns some 80,000 acres of cut-over land.

The tap line hauls the logs from the woods to the mill, making a charge of $1.50 per 1,000 feet, which is supposed to cover only the service performed on the logging spurs and not the haul over the main track. The greater portion of the lumber manufactured at Fisher is delivered to the Kansas City Southern, being switched about one-half mile by the tap line, while the greater part of
21 the lumber produced at the mill at Victoria is moved by the tap line one mile to the Texas & Pacific. A small amount of the lumber from each mill moves over the tap line to the more distant trunk line, but the same divisions are paid by the two trunk lines from both mills.

These allowances range from three-fourths cent to four cents per 100 pounds; and the joint rates are the same as the rates published from adjacent mills on the trunk lines, with the exception of traffic moving to points in Texas, where 1¼ cents per 100 pounds is added to the junction-point rate.

The tap line does not carry passengers; and more than 99 per cent of the total tonnage, amounting for the year 1910 to 316,676 tons, is furnished by the proprietary company. Its annual reports to the Commission indicate an accumulated surplus of $13,509.17 at the end of the fiscal year, June, 1910.

We cannot recognize the right of this tap line to participate as a common carrier in joint rates on the product of the mills of the proprietary company. The lumber rate of the Kansas City Southern must be held to apply from the mill at Fisher, and the rate of the Texas & Pacific from the mill at Victoria. Each of those lines may arrange with the lumber company to perform the necessary switching service for the distance of one-half mile and one mile, respectively, and may make it a reasonable compensation under Section 15.

Irregular Practices of Tap Lines.

It appears from the foregoing statements respecting the several tap lines described in this supplemental report, as well as from the statement of those described in the original report, that there are many respects in which the law and the rules and regulations of the Commission are not observed by them. Although claiming
22 to be common carriers, some of them did not file annual reports with the Commission until recently. The reports of others are so far from being complete that they cannot be said to comply with the requirements of the Act. Many of them, also, do not publish any local rates to apply on traffic received from or delivered to their trunk line connections. Many of them carry passengers and less-than-carload shipments without charge at all; others make a charge without the authority of published tariffs. We have

already referred to the use made by controlling lumber companies of their tap lines under formal and informal agreements for trackage rights with and without charge, and all without any tariff authority. The Hours of Service Law, the Safety Appliance Act, and other acts imposing certain requirements on common carriers engaged in interstate commerce are not fully complied with in many cases, and in others are wholly disregarded. There is a lack of attention also to our rules and regulations respecting the filing of tariffs and the keeping of accounts. In some cases, our examiners have been refused full access to the books of tap lines. With respect to all these matters, the law makes no exception in favor of any railroads that purport to be common carriers. While our conclusions, in no instance, have been based on the failure of a tap line to comply with our rules and regulations, we must give warning to all such companies that purport to hold themselves out as common carriers that such irregularities must promptly be corrected.

General Comments.

The rates of the trunk lines for the movements of logs in this territory are penalty rates; that is to say, the inbound rate to the mill is higher than it should be and is reduced to a net rate, provided
23 the lumber goes out over the rails of the same carrier. Such rate adjustments are adverted to and criticised in Red River Cotton Oil Co. v. T. & P. Ry. Co., 23 I. C. C. 437. So far as we can see from a careful examination of the record, there is no real necessity for any such rate adjustment in this territory. The penalty rates should be withdrawn, and in their place the carriers ought to fix reasonable flat rates for the inbound log movement.

Orders will be entered as soon as possible to give effect to the views expressed in the original and supplemental reports herein. Tariffs fixing rates and switching charges in accordance with our conclusions may be filed on three days' notice. The carriers will also be expected to submit for the approval of the Commission the basis of allowances to lumber companies, under Section 15, in the cases where in the original and supplemental reports we have said that such allowances might properly be paid. When approved by the Commission such allowances must be published.

In the majority of cases the tap lines have made no joint class and commodity rates with their trunk line connections. In other cases joint rates have been established, at least to some destinations. Where joint through class and commodity rates are in effect or are hereafter made effective to or from points on tap lines, the trunk lines and the tap lines will be expected to submit to the Commission for approval the basis of their divisions. It is expected also that they will submit for our approval reasonable and non-discriminatory rates on forest product when shipped from tap line points other than the mills of the controlling companies, and will also submit the basis of the divisions thereof.

When all these matters shall have been adjusted in compliance with the views of the Commission, an order will be entered authorizing

trunk lines to make settlements on these bases with respect to
24 all traffic moving after May 1, either under Section 15 or as allowances out of the rate, as provided herein in the respective cases.

Orders in other cases in which these or other tap lines in this territory are parties defendant may be called to our attention in case they are in conflict herewith.

By THE COMMISSION.

[SEAL.] JOHN H. MARBLE, *Secretary.*"

X.

Petitioners further state that the opinion No. 1898 reported in the 23d Interstate Commerce Commission Reports, page 549 et seq., purports to have been decided and is dated on May 14, 1912, but your petitioners allege that said opinion was not made public until the 1st day of June, 1912. Petitioners further state that on the 11th day of June, 1912, the Interstate Commerce Commission made and entered of record or made public on that day an order in words and figures as follows, to-wit:

"Order.

At a General Session of the Interstate Commerce Commission, Held at its Office in Washington, D. C., on the 14th Day of May, A. D. 1912.

Investigation and Suspension Docket No. 11.

In the Matter of the INVESTIGATION AND SUSPENSION OF SCHEDULES Canceling Through Rates with Certain Tap-Line Connections, and Certain Other Cases Consolidated Herewith.

It Appearing, That a full investigation of the matters and things herein involved has been had, and the Commission, on April 23,
1912, having made and filed a report containing its findings
25 of fact and conclusions thereon, and having also on the date hereof made and filed a supplemental report containing its further findings of fact and conclusions thereon, which said reports are hereby referred to and made a part hereof;

It Further Appearing, That the Commission has found that in the case of the following named parties to the record, and each of them, namely:

Malvern & Freeo Valley Railway Company;
Wilmar & Saline Valley Railroad Company;
Arkansas & Gulf Railroad Company;
Little Rock, Mammelle & Western Railroad Company;
Beirne & Clear Lake Railroad;
Mississippi, Arkansas & Western Railway Company;
Bearden & Ouachita River Railroad Company;
Arkansas Eastern Railroad Company;
Blytheville, Burdette & Mississippi River Railway Company;

Brookings & Peach Orchard Railway Company;
Crossett Railway Company;
Fordyce & Princeton Railroad Company;
Homan & Southeastern Railway Company;
Little Rock, Sheridan & Saline River Railway Company;
L'Anguille River Railway Company;
Ouachita Valley Railway Company;
Griffin, Magnolia & Western Railway Company;
Saline Bayou Railway Company;
Enterprise Railway Company;
Natchez, Ball & Shreveport Railway Company;
Black Bayou Railroad Company;
The Bodcaw Valley Railway Company;
Mill Creek & Little River Railway & Navigation Company;
26 Red River & Rocky Mount Railway Company;
Woodworth & Louisiana Central Railway Company;
Freeo Valley Railroad Company;
Natchez, Urania & Ruston Railway Company;
Bernice & Northwestern Railway Company;
Dorcheat Valley Railroad Company;
Manghan & Northeastern Railway Company;
Galveston, Beaumont & Northeastern Railway Company;
Peach River & Gulf Railway Company;
Riverside & Gulf Railway Company;
Jefferson & Northwestern Railway Company;
Beaumont & Saratoga Transportation Company;
Angeline & Neches River Railroad Company;
Missouri & Louisiana Railroad Company;
Saginaw & Ouachita River Railroad Company;
Warren, Johnsville & Saline River Railroad Company;
Blytheville, Leachville & Arkansas Southern Railroad Company;
The Caddo & Choctaw Railroad Company;
Manila & Southwestern Railway Company;
Louisiana & Pine Bluff Railway Company;
Mansfield Railway & Transportation Company;
Louisiana & Pacific Railway Company;
Roosevelt & Western Railroad Company;
Tioga & Southeastern Railway Company;
Louisiana Central Railroad Company;
Monroe & Southwestern Railway Company;
Victoria, Fisher & Western Railroad Company;
Ouachita & Northwestern Railroad Company;
Lake Charles Railway & Navigation Company;
27 Louisiana Railway Company;
Zwolle & Eastern Railway Company;
Sabine & Northern Railroad Company;
Gideon & North Island Railroad Company;
Poplar Bluff & Dan River Railway Company;

the service performed for the respective proprietary lumber companies in moving the logs from their respective forests to their respective mills and in moving the product from the mills to the trunk

lines is not a service of transportation by a common carrier railroad and that any allowances or divisions out of the rate on account thereof are unlawful:

It Further Appearing, That the following parties to the record, namely:

Little Rock, Maumelle & Western Railroad Company;
Bearden & Ouachita River Railroad Company;
Arkansas Eastern Railroad Company;
Crossett Railway Company;
Fordyce & Princeton Railroad Company;
Ouachita Valley Railway Company;
Freeo Valley Railroad Company;
Dorcheat Valley Railroad Company;
Galveston, Beaumont & Northeastern Railway Company;
Peach River & Gulf Railway Company;
Riverside & Gulf Railway Company;
Angelina & Naches River Railroad Company;
Saginaw & Ouachita River Railroad Company;
Blytheville, Leachville & Arkansas Southern Railroad Company;
The Caddo & Choctaw Railroad Company;
Manila & Southwestern Railway Company;
Louisiana & Pine Bluff Railway Company;
Mansfield Railway & Transportation Company;
Lake Charles Railway & Navigation Company;
Louisiana Railway Company;
28 Zwolle & Eastern Railway Company;
Gideon & North Island Railway Company;

have heretofore filed with the Commission petitions asking for the establishment or re-establishment of through routes and joint rates on forest products to interstate destinations, which said petitions or complaints are filed on or consolidated with the record herein and on which a full hearing has been had:

It Is Ordered, That said petitions, so far as they relate to rates on the products of the mills of the proprietary companies, be, and for the reasons set forth in said reports they are hereby, dismissed.

It is Further Ordered, That the defendants the Chicago, Rock Island & Pacific Railway Company; St. Louis & San Francisco Railroad Company; New Orleans, Texas & Mexico Railroad Company; Beaumont, Sour Lake & Western Railway Company; St. Louis, Iron Mountain & Southern Railway Company; The Texas & Pacific Railway Company; International & Great Northern Railway Company; The Missouri, Kansas & Texas Railway Company of Texas; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; The Paragould Southeastern Railway Company; Eastern Texas Railroad Company; The Kansas City Southern Railway Company; Texarkana & Fort Smith Railway Company; The Houston, East & West Texas Railway Company; Texas & New Orleans Railroad Company; Louisiana Western Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Lake Charles & Northern Railroad Company; Vicksburg, Shreveport &

Pacific Railway Company; Louisiana & Arkansas Railway Company; Louisiana Railway & Navigation Company; Gulf, Colorado & Santa Fe Railway Company; The Texas & Gulf Railway Company; Missouri & North Arkansas Railroad Company; Illinois Central Railroad Company; Southern Railway Company; Northern Alabama Railway Company; New Orleans Great Northern Railroad Company; and Mobile & Ohio Railroad Company be, and they are hereby, authorized, on not less than three days' notice, to reopen through routes and publish joint rates with the following parties to the record, and each of them, on the products of the mills of their respective proprietary companies:

Saline River Railway Company;
Warren & Ouachita Valley Railway Company;
El Dorado & Western Railway Company;
Thornton & Alexandria Railway Company;
Doniphan, Kensett & Searcy Railway;
Fourche River Valley & Indian Territory Railway Company;
Prescott & Northwestern Railroad Company;
Memphis, Dallas & Gulf Railroad Company;
Crittenden Railroad Company;
De Queen & Eastern Railroad Company;
Central Railway Company of Arkansas;
Gulf & Sabine River Railroad Company;
The Sibley, Lake Bisteneau & Southern Railway Company;
North Louisiana & Gulf Railroad Company;
Arkansas Southeastern Railroad Company;
Red River & Gulf Railroad Company;
Tremont & Gulf Railway Company;
The Nacogdoches & Southeastern Railroad Company;
Texas Southeastern Railroad Company;
Timpson & Henderson Railway Company;
Shreveport, Houston & Gulf Railroad Company;
Groveton, Lufkin & Northern Railway Company;
Moscow, Camden & San Augustine Railway Company;
Trinity Valley & Northern Railway Company;
Trinity Valley Southern Railroad Company;
Caro Northern Railway Company;
Butler County Railroad Company;
Deering Southwestern Railway;
Mississippi Valley Railway Company;
Paragould & Memphis Railway Company;
Salem, Winona & Southern Railroad Company;
Fernwood & Gulf Railroad Company;
New Orleans, Natalbany & Natchez Railway Company;
Alabama Central Railroad Company;
Washington & Choctaw Railway Company;

Provided, That allowances or divisoons out of such joint rates to be paid on the products of the mills of the said proprietary companies shall not exceed the divisions or allowances specified in the aforesaid supplemental report of the Commission.

It Is Further Ordered, That, for the reasons specified in the said supplemental report, no allowances or divisions shall be made on the products of the mills of the lumber companies owning or controlling the following companies party to the record:

Gould Southwestern Railway Company;
Kentwood & Eastern Railway Company;
Kentwood, Greensburg & Southwestern Railroad Company;
Liberty-White Railroad Company;
Natchez, Columbia & Mobile Railroad Company;

And It Is Further Ordered, That the joint rates hereinabove authorized may be published on three days' notice to the public and to the Commission, the tariffs to refer to this order by date and number, and on like notice any of the said defendants or parties to the record may republish rates on class and commodity traffic and on products of mills other than those of the respective proprietary lumber companies.

[SEAL.] By THE COMMISSION,
JOHN H. MARBLE, *Secretary.*

31 XI.

Petitioners allege that, conceiving the foregoing orders and proceedings of the Interstate Commerce Commission to be affirmative orders of said Commission requiring the cancellation of all joint rates with the various railway companies therein declared not to be entitled to participate in joint rates and that said orders and proceedings of the Commission were legal and void as beyond the jurisdiction of the Interstate Commerce Commission and in conflict with the Constitution and laws of the United States, certain of said railway companies, to-wit, among others, the Louisiana & Pacific Railway Company, the Woodworth & Louisiana Central Railroad Company and the Sibley, Lake Bisteneau & Southern Railway Company, filed suits in this Honorable Court for injunction against the enforcement of said order and for the cancellation thereof, whereupon the United States and the Interstate Commerce Commission moved to dismiss and suits upon the authority of the case of Proctor & Gamble Co. v. United States of America, 25 U. S. 282, upon the ground that said orders were not affirmative orders of the Interstate Commerce Commission of which this Honorable Court had jurisdiction, whereupon this Honorable Court held that under the authority of said Proctor & Gamble case, it was without jurisdiction to hear or to determine said suits and the same were thereupon dismissed for lack of jurisdiction.

XII.

32 That thereupon petition by your petition Victoria, Fisher & Western Railroad Company and others was duly filed with the Interstate Commerce Commission to make and enter such amended order as should be affirmative in its terms and subject to the jurisdiction and review of this Honorable Court. That in accordance with said petition the Interstate Commerce Commission on

the 30th day of October, A. D. 1912, amended said order of date May 14, 1912, hereinabove referred to, which said amended order is as follows, to-wit:

"Interstate Commerce Commission.

Investigation and Suspension Docket No. 11. The Tap-Line Case.

Amended Order.

At a General Session of the Interstate Commerce Commission, Held at its Office in Washington, D. C., on the 30th Day of October, A. D. 1912.

Investigation and Suspension Docket No. 11.

In the Matter of the INVESTIGATION AND SUSPENSION OF SCHEDULES Canceling Through Rates with Certain Tap-Line Connections, and Certain Other Cases Consolidated Herewith.

This matter coming on again upon a motion for an amendment of the order heretofore entered by the Commission on May 14, 1912, and the Commission being fully advised.

It Is Ordered, That the said order be, and it is hereby, modified to read as follows:

1. It Appearing, That a full investigation of the matters and things herein involved has been had, and the Commission, on April 23, 1912, having made and filed a report containing its findings of fact and conclusions thereon, and having also on the said 14th day of May, 1912, made and filed a supplemental report containing its further findings of fact and conclusions thereon, which said reports are hereby referred to and made a part hereof;

33 2. If Further Appearing, That the Commission upon the record finds in the case of the following-named parties to the record, and each of them, namely:

Malvern & Freeon Valley Railway Company;
Wilmar & Saline Valley Railroad Company;
Arkansas & Gulf Railroad Company;
Little Rock, Maumelle & Western Railroad Company;
Beirne & Clear Lake Railroad;
Mississippi, Arkansas & Western Railway Company;
Bearden & Ouachita River Railway Company;
Arkansas Eastern Railroad Company;
Blytheville, Burdette & Mississippi River Railway Company;
Brookings & Peach Orchard Railroad Company;
Crossett Railroad Company;
Fordyce & Princeton Railroad Company;
Homan & Southeastern Railway Company;
Little Rock, Sheridan & Saline River Railway Company;
L'Anguille River Railway Company;
Ouachita Valey Railway Company;

Griffin, Magnolia & Western Railway Company;
Saline Bayou Railway Company;
Enterprise Railway Company;
Natchez, Ball & Shreveport Railway Company;
Black Bayou Railway Company;
The Bodcaw Valley Railway Company;
Mill Creek & Little River Railway & Navigation Company;
Red River & Rocky Mount Railway Company;
Woodworth & Louisiana Central Railway Company;
Freeo Valley Railroad Company;
Natchez, Urbana & Ruston Railway Company;
34 Bernice & Northwestern Railway Company;
Dorcheat Valley Railroad Company;
Manghan & Northeastern Railway Company;
Galveston, Beaumont & Northeastern Railway Company;
Peach River & Gulf Railway Company;
Riverside & Gulf Railway Company;
Jefferson & Northwestern Railway Company;
Beaumont & Saratoga Transportation Company;
Angelina & Naches River Railroad Company;
Missouri & Louisiana Railroad Company;
Saginaw & Ouachita River Railroad Company;
Warren, Johnsville & Saline River Railroad Company;
Blytheville, Leachville & Arkansas Southern Railroad Company;
The Caddo & Choctaw Railroad Company;
Manila & Southwestern Railway Company;
Louisiana & Pine Bluff Railway Company;
Mansfield Railway & Transportation Company;
Louisiana & Pacific Railway Company;
Roosevelt & Western Railroad Company;
Tioga & Southeastern Railway Company;
Louisiana Central Railroad Company;
Monroe & Southwestern Railway Company;
Victoria, Fisher & Western Railroad Company;
Ouachita & Northwestern Railroad Company;
Lake Charles Railway and Navigation Company;
Louisiana Railway Company;
Zwolle & Eastern Railway Company;
Sabine & Northern Railroad Company;
Gideon & North Island Railroad Company;
Poplar Bluff & Dan River Railway Company;
35 that the tracks and equipment with respect to the industry of the several proprietary companies are plant facilities, and that the service performed therewith for the respective proprietary lumber companies is moving logs to their respective mills and performed therewith in moving the products of the mills to the trunk lines is not a service of transportation by a common-carrier railroad but is a plant service by a plant facility; and that any allowances or divisions out of the rate on account thereof are unlawful and result in undue and unreasonable preferences and unjust discriminations, as found in the said reports;

3. It is Ordered, That the principal defendants, the Chicago, Rock Island & Pacific Railway Company; St. Louis & San Francisco Railroad Company; New Orleans, Texas & Mexico Railroad Company; Beaumont, Sour Lake & Western Railway Company; St. Louis, Iron Mountain & Southern Railway Company; The Texas & Pacific Railway Company; International & Great Northern Railway Company; the Missouri, Kansas & Texas Railway Company; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; The Paragould Southeastern Railway Company; Eastern Texas Railroad Company; The Kansas City Southern Railway Company; Texarkana & Fort Smith Railway Company; The Houston, East & West Texas Railway Company; Texas & New Orleans Railroad Company; Louisiana Western Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Lake Charles & Northern Railroad Company; Vicksburg, Shreveport & Pacific Railway Company; Louisiana & Arkansas Railway Company; Louisiana Railway & Navigation Company; Gulf, Colorado & Santa Fe Railway Company; The Texas & Gulf Railway Company; Missouri & North Arkansas Railroad Company; Illinois Central Railroad Company; Southern Railway Company; Northern Alabama Railway Company; New Orleans Great Northern Railroad Company; and Mobile & Ohio Railroad Company be, and they are hereby, notified and required to cease and desist, and for a period of two years hereafter, or until otherwise ordered, to abstain from making any such allowances to any of the above named parties to the record in respect of any such above described service.

36

4. It Further Appearing, That the following parties to the record, namely:

Little Rock, Maumelle & Western Railroad Company;
Bearden & Ouachita River Railroad Company;
Arkansas Eastern Railroad Company;
Crossett Railway Company;
Fordyce & Princeton Railroad Company;
Ouchita Valley Railway Company;
Freco Valley Railroad Company;
Dorcheat Valley Railroad Company;
Galveston, Beaumont & Northeastern Railway Company;
Peach River & Gulf Railway Company;
Riverside & Gulf Railway Company;
Angelina & Neches River Railroad Company;
Saginaw & Ouachita River Railroad Company;
Blytheville, Leachville & Arkansas Southern Railroad Company;
The Caddo & Choctaw Railroad Company;
Manila & Southwestern Railroad Company;
Louisiana & Pine Bluff Railroad Company;
Mansfield Railway & Transportation Company;
Lake Charles Railway & Navigation Company;
Louisiana Railway Company;
Zwolle & Eastern Railway Company;
Gideon & North Island Railroad Company;

have heretofore filed with the Commission their several peti-
37 tions asking for the establishment or re-establishment of through routes and joint rates to interstate destinations, which said petitions or complaints are filed on or consolidated with the record herein and on which a full hearing has been had:

5. It Is Ordered, That said petitions, so far as they relate to rates on the products of the mills of the respective proprietary companies, be and for the reasons set forth in said reports they are hereby, dismissed.

6. It Further Appearing, That the following parties to the record, namely:

Warren & Ouachita Valley Railway Company;
El Dorado & Wesson Railway Company;
Thornton & Alexandria Railway Company;
Fourche River Valley & Indian Territory Railway Company;
Prescott & Northwestern Railroad Company;
Crittenden Railroad Company;
North Louisiana & Gulf Railroad Company;
Arkansas Southeastern Railroad Company;
Red River & Gulf Railroad Company;
Tremont & Gulf Railway Company;
The Nacogdoches & Southeastern Railroad Company;
Texas Southeastern Railroad Company;
Shreveport, Houston & Gulf Railroad Company;
Groveton, Lufkin & Northern Railway Company;
Trinity Valley & Northern Railway Company;
Trinity Valley Southern Railroad Company;
Caro Northern Railroad Company;
Butler County Railroad Company;
Deering Southwestern Railway;
Mississippi Valley Railway Company;
Paragould & Memphis Railway Company;

38 have heretofore filed with the Commission their several petitions asking for the establishment or re-establishment of through routes and joint rates to interstate destinations, which said petitions or complaints are filed on or consolidated with the record herein, and on which a full hearing has been had:

7. It Is Ordered, That the said principal defendants above named be, and they are hereby required, on or before January 1, 1913, to re-establish, and for a period of two years to maintain with each of the said parties to the record last above named, the through interstate routes and joint rates in effect, in accordance with their respective tariffs filed with this Commission, on April 30, 1912;

8. Provided, That the rates on yellow pine lumber and articles taking the same rates from points on the lines of the last above named parties to the record shall not exceed the current rates in effect from the junction points; and

9. Provided Further, That the allowances or divisions out of such joint rates to be paid by said principal defendants, respectively, to the said last named parties to the record on the products of the mills of the said respective proprietary companies named in said report

shall not exceed the divisions or allowances specified in the aforesaid supplemental report of the Commission, which are hereby fixed as maximum divisions or allowances thereon, until further order, the Commission finding upon the record that any allowances or divisions in excess thereof result in undue preferences and unjust discriminations and are unlawful.

10. It Is Further Ordered, That in the case of the following parties to the record, by which petitions for the establishment or re-establishment of through routes and joint rates have not been filed, namely:

39 Saline River Railway Company;
Doniphan, Kensett & Searcy Railway;
Memphis, Dallas & Gulf Railroad Company;
De Queen & Eastern Railroad Company;
Central Railway Company of Arkansas;
Gulf & Sabine River Railroad Company;
The Sibley, Lake Bisteneau and Southern Railway Company;
Timpson & Henderson Railway Company;
Moscow, Camden & San Augustine Railway Company;
Salem, Winona & Southern Railroad Company;
Fernwood & Gulf Railroad Company;
New Orleans, Natalbany & Natchez Railway Company;
Alabama Central Railroad Company;
Washington & Choctaw Railway Company;

the said principal defendants be, and they are hereby, authorized to re-establish the through routes and joint rates in effect, in accordance with their respective tariffs filed with this Commission, on April 30, 1912, subject to the terms and conditions prescribed in paragraphs 8 and 9 hereof; and provided further, that upon the failure of the principal defendants to re-establish the through routes and joint rates in effect on April 30, 1912, with the last above named parties to the record on or before January 1, 1913, the Commission will upon the filing herein of appropriate petitions therefor enter an order upon the record herein requiring the re-establishment of such through routes and joint rates.

11. It Is Further Ordered, That in case of the failure of the principal defendants to re-establish, on or before January 1, 1913, the through routes and joint rates in effect on April 30, 1912, on traffic other than the products of the mills of the respective proprietary companies in the case of any of the parties to the record first herein above named, the Commission will upon appropriate
40 petition herein enter an order requiring the establishment of such through routes and joint rates or enter upon an inquiry with respect thereto.

12. It Is Further Ordered, That the divisions of all joint rates herein required and authorized to be re-established on traffic other than the products of the mills of the several proprietary lumber companies shall be submitted to the Commission by the parties hereto for approval.

13. It Is Further Ordered, That, in the case of the following parties to the record, namely:

Gould Southwestern Railway Company;
Kentwood & Eastern Railway Company;
Kentwood, Greensburg & Southwestern Railroad Company;
Liberty-White Railroad Company;
Natchez, Columbia & Mobile Railroad Company;
for the reasons specified in the said supplemental report no allowances or divisions shall be made on the products of the mills of the respective proprietary lumber companies.

14. And It Is Further Ordered, That the joint rates herein above authorized or required may be published on three days' notice to the public and to the Commission, the tariffs to refer to this order by date and number.

By the Commission.

[SEAL.] JOHN H. MARBLE,
Secretary.

XIII.

Petitioners further state that as a common carrier of state, interstate and foreign commerce, Victoria, Fisher & Western Railroad Company became and was until midnight on the 30th day
41 of April, 1912, a party to joint tariffs with the Kansas City Southern Railway Company and the Texas & Pacific Railway Company on lumber and forest products constituting with said Victoria, Fisher & Western Railroad Company through routes and reasonable joint through rates between all points on said Victoria, Fisher & Western Railroad Company's line of railway to the various consuming territories of the United States, and foreign, but that pursuant to the orders and proceedings of the Interstate Commerce Commission and the orders above mentioned and especially of said amended order of date October 30, 1912, said joint through rates and tariffs have been canceled and are no longer operative or effective and said Victoria, Fisher & Western Railroad Company is forbidden thereby to engage in interstate commerce by participation in through interstate rates on the lumber and lumber products of the Louisiana Long Leaf Lumber Company and said Louisiana Long Leaf LumberCompany is denied the privilege of through rates which are accorded to its competitors and is compelled to pay the sum of the through rates applicable from Fisher and Victoria on the Texas & Pacific Railway and the Kansas City Southern Railway respectively, plus the local rate of the Victoria, Fisher & Western Railroad Company to the junction point thereof with said trunk-line railways.

XIV.

That under and by virtue of said order of said 30th day of October, 1912, the Interstate Commerce Commission finds that petitioner, Victoria, Fisher & Western Railroad Company, is a plant
42 facility of the Louisiana Long Leaf Lumber Company and that the services performed by said Victoria, Fisher & Western Railroad Company in moving logs to its mills and in moving the products of the mills to the trunk lines is not a service of trans-

portation by a common carrier railroad, but is a plant service by a plant facility, and that any allowance or division out of the rate on account thereof is unlawful and results in undue and unreasonable preferences and unjust discriminations, and the Texas & Pacific Railway Company and the Kansas City Southern Railway Company and the various other railway companies in said order mentioned are affirmatively required for a period of two years after the date of said order to abstain from making any allowance out of the through rate to said Victoria, Fisher & Western Railroad Company in respect to such service.

XV.

Petitioners say that it is not true, as found in said order, that the Victoria, Fisher & Western Railroad Company is in any sense a plant facility of the Louisiana Long Leaf Lumber Company, nor is the service rendered by it in transporting the logs of said Lumber Company to the mill and in transporting the lumber of the mill of said Lumber Company to said trunk-line connections a plant or inter-work service; that there is no substantial testimony to justify said finding of fact and that the Interstate Commerce Commission had no authority, power or jurisdiction to find or declare that said Victoria, Fisher & Western Railroad Company as to such service is not a common carrier, but a mere plant facility. That the
43 Louisiana Long Leaf Lumber Company as such owns no stock in the Victoria, Fisher & Western Railroad Company and exercises no control thereover. That while it is true that a majority of the stockholders of the Louisiana Long Leaf Lumber Company as individuals own a majority of the stock of the Victoria, Fisher & Western Railroad Company, that said Companies are entirely distinct in their corporate organizations and in the conduct of their respective businesses and that the Victoria, Fisher & Western Railroad Company is conducted as a separate and independent organization and operates its line of railway as a common carrier in full compliance with all of the laws of the State of Louisiana and of the United States and in full compliance with all of the rules and regulations of the Railroad Commission of the State of Louisiana and of the Interstate Commerce Commission. That being fully equipped to discharge its duties as a common carrier to the public, it does so discharge said duties and in addition to its other services transports the lumber of said Louisiana Long Leaf Lumber Company a distance in excess of twenty-two miles to points of delivery with its trunk-line connections aforesaid, and petitioner says that if the Victoria, Fisher & Western Railroad Company in its corporate capacity directly and absolutely owned and controlled the Louisiana Long Leaf Lumber Company, that, nevertheless, under the provisions of the Interstate Commerce Act it has full right and power to transport said lumber and to receive just and legal compensation therefor, for that under the commodities clause of Section 1 of said Act to Regulate Commerce, while it is made unlawful after May 1, 1908,
44 for any railroad company to transport in interstate commerce any article or commodity manufactured, mined or produced

by it or under its authority or which it may own in whole or in part, or in which it may have any interest direct or indirect, timber and the manufactured products thereof, are specifically excepted from such provisions and petitioners say that the Victoria, Fisher & Western Railroad Company has the right under the Constitution and laws of the United States, and specially the Act to Regulate Commerce, to engage in interstate commerce, and that the right to transport timber and the products thereof carries with it as an inseparable incident the right to receive compensation therefor, and that the Interstate Commerce Commission is wholly without legal right, authority or jurisdiction to make said order to declare that said Victoria, Fisher & Western Railroad Company is not a common carrier as to the services embraced in said order or to deprive it of the right to receive compensation therefor, and petitioner says that said order is void, because (1) it is based upon no substantial evidence, and the uncontradicted evidence shows that it is not a plant facility in the sense used, but that it is a common carrier discharging all of its duties as such and subject to the obligations of a common carrier under the laws of the state of its creation and of the United States, and (2) that the Interstate Commerce Commission is wholly without authority or jurisdiction to make said order.

XVI.

Petitioner further says that said order is wholly arbitrary and rests upon no just or logical basis. That the Interstate Com-
45 merce Commission in said order without reason arbitrarily classes one common carrier as a plant facility and accords another similarly situated, performing the same service and with the same characteristics, as a common carrier in good faith permitted to engage in interstate commerce and participate in a division of the through rates. That an inspection of said opinions hereinabove referred to discloses that there is no logical basis of classification between the different carriers involved and their assignment to the one class or the other as a plant facility or a common carrier in good faith is not governed by any fixed or logical basis of classification, but is wholly arbitrary, discriminative and illogical. As examples, among others, the Saline River Railway Company, for which see page 554 of said opinion: This railway is nineteen miles long and its stock is owned by the stockholders of the Saline River Lumber Company. It connects with the St. Louis Southwestern Railway Company at Draughon and with the Warren & Ouachita at Glenn. The sawmill of the lumber company is situated at Draughon on the St. Louis Southwestern Railway. While it is allowed no division of the through rate with the St. Louis Southwestern, it is allowed a division together with the Warren & Ouachita Valley Railway Company in connection with the Chicago, Rock Island & Pacific. The application of the same principles applied in the Saline River Railway case would require that for lumber transported from Victoria to the Kansas City Southern at Fisher an allowance of the through rate could be made and likewise for lumber

transported from the mill at Fisher to the Texas & Pacific
46 at Victoria, but that no division of the through rate could be allowed on lumber delivered to the Texas & Pacific from the mill at Victoria or delivered to the Kansas City Southern when delivered from the mill at Fisher; nevertheless, without any reason whatsoever, the divisions are allowed in the Saline River Railway case and not allowed to your petitioners.

A similar case is that of the Warren & Ouachita which extends from Banks on the Chicago, Rock Island & Gulf to Warren on the St. Louis, Iron Mountain & Southern. The mill of the so-called proprietary lumber company is situated at Warren, fifteen miles from Banks, the junction with the Chicago, Rock Island & Gulf. This line is not so well equipped as the line of your petitioner, nor is there so extensive a haul on the finished product of the mill, nevertheless, it is permitted to participate in through rates in connection with Chicago, Rock Island & Gulf and receive therefor a division not exceeding two cents per hundred pounds.

A similar case is that of the Thornton & Alexandria Railroad Company, the Doniphan, Kensett & Searcy Railway Company, the Red River & Gulf Railway and others, as will be apparent by an inspection of said opinion. The last mentioned line connects with the Iron Mountain at Long Leaf and the Rock Island and Texas & Pacific and Southern Pacific at LeCant, the track between those points being about thirteen miles in length. The stock of the railway company is owned by the stockholders of the Crowell & Spencer
Lumber Company. The mill is situated adjacent to the
47 tracks of the Iron Mountain road and is twelve miles distant from the Rock Island. An allowance of a switching charge of $2.00 is made by an opinion and order to the Iron Mountain road and a division of two cents per hundred pounds is fixed for the twelve-mile haul to the Chicago, Rock Island & Pacific. This line has an equipment consisting of one locomotive, one combination passenger and freight car and three flat cars. In its general characteristics it is not more permanent and is not so well equipped as the line of petitioner. Nevertheless, for a haul of twelve miles it is allowed to participate in the through rate, receiving as compensation two cents while petitioner, Victoria, Fisher & Western Railroad Company, for a haul of twenty-two miles on the finished product, is allowed no compensation of any character and is not allowed to participate in the through rate. Wherefore petitioner says that said order is unjustly and illegally discriminative against petitioner. That it denies it the equal protection of the law and due process of law. That it is arbitrary and rests upon no logical basis and is without substantial evidence to support it.

Petitioner further says that said order of the Interstate Commerce Commission is in violation of that portion of Section 15 of the Interstate Commerce Act reading as follows:

"The Commission may also after hearing on complaint, or upon its own initiative without complaint, establish through routes and joint classifications."

And is in further violation of that portion of Section 15 of said Act which prescribes that wherever carriers shall fail to agree
48 among themselves in respect to joint fares or charges, the Commission may, after hearing, prescribe a just and reasonable proportion of such joint rate to be received by each carrier, party thereto, in that the Commission is without power to fix the divisions between the carriers of a joint rate in the absence of disagreement between the carriers relative thereto.

XVII.

Petitioners further allege that in interstate commerce shipments there prevails now and has prevailed for many years in all the lumber producing districts of Louisiana and the southern pine districts with a full concurrence of all of the railway systems and the producers and shippers of lumber, and with a full concurrence of the Interstate Commerce Commission what is known as the "blanket rate"; that is to say, all lumber rates from all points on all lines in a given territory are the same to any point in any other given territory; that under said system there prevails such blanket rates whereby all of the lumber producing mills and manufactories in Louisiana, Texas and the greater part of Arkansas shipped to lumber consuming territories in the northwest and northeast lumber at the same rates regardless of mileage; that under said system the lumber rates for interstate shipments from any point on the line of petitioner Victoria, Fisher & Western Railroad Company and in particular from the mills of petitioner Louisiana Long Leaf Lumber Company, were, until the first day of May, 1912, the same as from all
49 other mills situated in the States of Louisiana and Texas, and from that portion of the State of Arkansas within the blanket-rate territory. That said rates prevailed and were available to petitioner Louisiana Long Leaf Lumber Company, and the purchasers of its lumber, until May 1, 1912. That petitioner Louisiana Long Leaf Lumber Company is in active competition with mills situated in said territory both directly on the main or trunk line railways and also situated on short-line railways whose situations are substantially identical with that of the Victoria, Fisher & Western Railroad Company, but which, nevertheless, are accorded by the orders herein complained of through routes and joint rates. That said order unjustly discriminates against petitioner Lumber Company and those purchasing lumber from it, in that if the exigencies of business, car supply or rates compel it to ship from its mill at Victoria over the Victoria, Fisher & Western Railroad Company to Fisher and thence to interstate or foreign points, or if compelled for the same reason to ship from its mill at Fisher over the Victoria, Fisher & Western Railroad to the Texas & Pacific Railway at Victoria and thence to interstate and foreign points, it is deprived in such shipments of the advantage of through routes and joint rates and is compelled to pay, in addition to the through blanket rate, the local or state rate to the point of junction with the through line and to the extent of the local rate, which petitioner alleges, under the

rates and practices of the Louisiana Railroad Commission, will be not less than five cents per hundred pounds, said petitioner Lumber Company would be subjected to an undue, unjust and illegal
50 discrimination, and is further deprived of the privilege of through bills of lading enjoyed by its competitors in the same territory. Wherefore, petitioner Louisiana Long Leaf Lumber Company says that said order is as to it violative of Section 3 of the Interstate Commerce Act, which prohibits undue or unreasonable preferences or advantages to any particular person, company, firm, corporation or locality or any particular description of traffic in any respect whatsoever or subjects any particular person, company, firm, corporation or locality or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever, and said order is violative of said Section 3 as applicable to petitioner, Victoria, Fisher & Western Railroad Company, in that it seeks to compel it to unjustly and illegally discriminate against the Louisiana Long Leaf Lumber Company and the products of said Company in favor of other companies which now or may be hereafter situated upon its line, contrary to the provisions of said Section 3 of said Interstate Commerce Act.

XVIII.

Petitioners further say that, notwithstanding under said order the petitioner Louisiana Long Leaf Lumber Company is compelled to ship its said lumber and forest products on local or intrastate bills of lading and under local or intrastate rates to the points of junction with said trunk lines, nevertheless, under the law, said traffic constitutes interstate commerce in that it moves in continuous transit from point of origin to point of destination in other states and territories and to foreign points, and that under the law it is
51 the duty of said Victoria, Fisher & Western Railroad Company to file with the Interstate Commerce Commission rates applicable thereto which shall be just and reasonable and non-discriminatory, and that it is beyond the power, authority and jurisdiction of the Interstate Commerce Commission to relieve said Railway Company of said duty or to deprive it of the privilege of engaging in such commerce under just, reasonable and non-discriminatory tariffs of charges regularly filed, and said order is contrary to and in violation of that portion of Section 1 of the Act to Regulate Commerce providing that:

"All charges made for any services rendered or to be rendered in the transportation of passengers or property or in connection therewith shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful, and it is hereby made the duty of all common carriers, subject to the provisions of this Act, to establish, observe and enforce just and reasonable classifications of property for transportation with reference to which rates, tariffs, regulations or practices are or may be made or prescribed, and just and reasonable regulations and practices affecting classifications, rates or tariffs."

XIX.

Petitioner Victoria, Fisher & Western Railroad Company, further alleges that all lumber and forest products, whether the property of the Louisiana Long Leaf Lumber Company or of other parties, moving in continuous transit from point of origin over said line
52 to interstate and foreign points is, as above alleged, interstate commerce, and that under the law it is not entitled to receive for such transportation any other or different compensation from that prescribed in rates duly and legally filed with the Interstate Commerce Commission and duly published in accordance with the terms of the Act to Regulate Commerce and that if not permitted to participate in such commerce or to concur in joint rates and in through routes, it will not be permitted to earn revenue on interstate shipments of lumber and cannot earn sufficient to pay its operating and other expenses, and that the orders of the Commission herein complained of deny its said right and operate to confiscate its property, devote the same to public use without compensation and deny it that due process of law to which it is entitled under the Constitution of the state of its creation and of the United States.

Wherefore, your petitioners say that said reports and decisions of the Interstate Commerce Commission and said order of date October 30, 1912, made in pursuance of said reports, orders and decisions, are invalid and void for the following, among other reasons, to-wit:

1. The Interstate Commerce Commission is wholly without power, authority or jurisdiction to declare that there is any proprietary lumber or companies of the Victoria, Fisher & Western Railroad Company, to declare that the services performed by said Railway Company for petitioner Louisiana Long Leaf Lumber Company, in moving the logs from the forest to the mills or in moving the lumber from the mills to the connecting trunk lines is not a service
53 of transportation by a common carrier railroad, and that any allowance or division out of the rate on account thereof is unlawful, or to deprive said Victoria, Fisher & Western Railroad Company of its rights as a common carrier granted to it under the Constitution and laws of the State of Louisiana and the Constitution and laws of the United States.

2. There is no substantial testimony in said cause justifying the finding of the Interstate Commerce Commission that the Victoria, Fisher & Western Railroad Company is a plant or inter-work facility of the Louisiana Long Leaf Lumber Company, and the uncontradicted testimony herein shows that the Victoria, Fisher & Western Railroad Company is a common carrier performing the duties of a common carrier and subject to all and singular the obligations thereof imposed by the laws of the State of Louisiana and of the United States, and that the service performed in the transportation of the logs and lumber of the Louisiana Long Leaf Lumber Company is a transportation service in interstate and foreign commerce.

3. Said order is invalid and void in that it is in direct conflict with the commodities clause of Section 1 of the Act to Regulate Com-

merce, which specifically permits a railway company to transport timber and the manufactured products thereof, even though the same was directly owned, manufactured or produced by it or under its authority, or whether it had therein any interest whatsoever direct or indirect.

54 4. Said order deprives your petitioner of the through routes and joint rates provided under Section 15 of the Interstate Commerce Act.

5. Said order is violative of Section 6 of the Interstate Commerce Act which provides that every common carrier, subject to the provisions of the Act, shall file with the Commission and print and keep open to public inspection schedules showing all the rates, fares and charges for transportation between different points on its own routes and points on the route of any other carrier by railway and that no carrier shall engage in transportation unless it files and publishes rates, fares and charges thereon which published rates shall not be departed from.

6. Said order is arbitrary, unreasonable and void and deprives petitioner of the equal protection of the law and due process of the law in that without any just, reasonable or logical reason therefor it prevents petitioner Victoria, Fisher & Western Railroad Company from engaging in interstate commerce and receiving any compensation therefor, while at the same time permitting and requiring other lines of railway similarly situated and which cannot by any just reason be differentiated from the line of your petitioner to engage therein, concur in joint tariffs and through routes and rates and participate in a division thereof.

7. Said order deprives your petitioner of due process of law, deprives it of its property without due process of law and devotes the same to public use without compensation in that it denies it the right to participate in interstate commerce on the lumber

55 and forest products of the Louisiana Long Leaf Lumber Company and derive revenue therefrom without which it cannot pay operating expenses or earn any just or reasonable return upon the value of its plant.

8. Said order unduly and illegally discriminates against the Louisiana Long Leaf Lumber Company as shippers, as compared with shippers on other railroads within the same territory and competitive on business, and discriminates against said lumber company as compared with shippers of lumber now situated or which may hereafter be situated on the line of the Victoria, Fisher & Western Railway Company.

9. Said order discriminates against all purchasers of lumber from the Louisiana Long Leaf Lumber Company in that if it should be held that the lumber of said company in the transit from its mills to the junction point with the trunk line company is intrastate commerce subject to the local Louisiana state rate, all purchasers of lumber paying such freight will be compelled to pay the additional amount of such local state rate and will be driven thereby to purchase only from mills situated either upon trunk lines or upon other

short lines similarly situated with the Victoria, Fisher & Western Railroad, but which by said order have been allowed to participate in joint rates and through routes, thereby depriving said purchasers of the competition of mills and depriving petitioner Lumber Company of the competition of purchasers, all of which is contrary to and in violation of section three of the Act to Regulate Commerce.

56 10. Under the findings of fact made by the Interstate Commerce Commission herein, the Victoria, Fisher & Western Railroad Company is a common carrier of lumber of the petitioner Louisiana Long Leaf Lumber Company and of all other mills on its line of railway.

Wherefore, each of your petitioners prays that the order of the Interstate Commerce Commission of date October 30, 1912, be declared null and void and that said Interstate Commerce Commission and the United States and all persons claiming to act under their authority be enjoined and restrained from enforcing or seeking to enforce the same in so far as same is applicable to your petitioners and their said trunk line connections.

Petitioners further say that they are now being and will continue to be irreparably damaged by reason of the order aforesaid and pray that said Interstate Commerce Commission be temporarily enjoined and restrained from enforcing said order against petitioner Victoria, Fisher & Western Railroad Company, and against said Kansas City Southern Railway Company and said Texas & Pacific Railway Company or any or either of their connections, and that said Interstate Commerce Commission be ordered and commanded to accept, receive and file tariffs and schedules of rates on all lumber moving out over the line of petitioner Victoria, Fisher & Western Railroad Company, over the lines of said Kansas City Southern and Texas & Pacific Railway Companies and their connections, prescribing and installing joint rates and through routes from points on the line of petitioner Railroad Company to all interstate points and on all traffic

57 moving to interstate or foreign points and enjoining and commanding said Interstate Commerce Commission to refrain from preventing or endeavoring to prevent petitioner Victoria, Fisher & Western Railroad Company from agreeing with its said connections, Kansas City Southern Railway Company and the Texas & Pacific Railway Company, on just and reasonable divisions of said through rates.

Petitioners pray for issuance of subpœna to the United States of America issuing out of and under seal of this Honorable Court directed to the United States of America, therein and thereby commanding it on a day certain therein to be named and under a certain penalty to be and appear before this Honorable Court then and there to answer, but not under oath, answer under *under* oath being hereby expressly waived, all and singular, the premises, and to stand to, perform and abide by such order, direction or decree as may be made in the premises — as shall seem meet and agreeable to equity and good conscience, and petitioners pray that on final hearing hereof